

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN KIAWAH RESORT ASSOCIATES, L.P.  
AND THE TOWN OF KIAWAH ISLAND**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into this 12th day of October, 2005, (the effective date) by and between KIAWAH RESORT ASSOCIATES, L.P., a limited partnership organized and existing under the laws of Delaware, and the other persons defined and described as Property Owner and the TOWN OF KIAWAH ISLAND, a municipal corporation organized and existing under the laws of the State of South Carolina.

**RECITALS**

WHEREAS, the Town of Kiawah Island (the "Town") and Kiawah Resort Associates, L.P. (one of the Property Owners herein) and other persons entered a Development Agreement effective September 26, 1994 (the "Initial Agreement") (recorded in the RMC Office for Charleston County at Book J248, Page 001); and

WHEREAS, the Town and Kiawah Resort Associates, L.P. entered and recorded the First through Ninth Amendments to the Initial Agreement in the RMC Office for Charleston County, with the Ninth Amendment being recorded at Book D 537, Page 223; and,

WHEREAS, the Property Owner and the Town desire to terminate the Initial Agreement and replace it with this Development Agreement; and,

WHEREAS, the Property Owner and the Town desire that this Development Agreement shall take precedence and control to the extent that there is a conflict between the terms of this Development Agreement and the Initial Agreement or the Nine Amendments to the Initial Agreement; and

WHEREAS, under § 6-31-50(a) the Town Council conducted public hearings regarding its consideration of this Development Agreement on September 7, 2005, and on September 9, 2005, after publishing and announcing notice of intent to consider this Development Agreement was advertised in a newspaper of general circulation in Charleston County, setting forth the date of the first public hearing, with such notice specifying the location of the property subject to this Development Agreement as well as the other information required under § 6-31-50(B)(2); and

WHEREAS, under S.C. Code § 6-31-60(A)(7) the Town Council of the Town determined on October 12, 2005 that this Development Agreement is consistent with the Town's Comprehensive Plan and Land Development Regulations; and

WHEREAS, under S.C. Code § 6-31-30, the Town Council of the Town adopted Ordinance No. 2005-6 on October 12, 2005, approving this Development Agreement.

**NOW THEREFORE**, the Parties agree:

1. **Definitions.** In this Development Agreement, capitalized words or phrases shall be defined and have the meaning set forth in Exhibit 1.1.
2. **Parties.** Parties to this Agreement are the Property Owner and the Town.

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## 6. COMPATIBILITY STANDARDS.

The Compatibility Standards of the Land Development Regulations of the Town at the time of the effective date of this Agreement shall apply.

(a) Replatting

The Town, subject to compliance with applicable Laws, may approve replatting or re-configuration of Lots or Development Parcels contained in Subdivision Plats approved prior to the effective date of this Agreement. The Town shall notify the Property Owner when a person applies for replatting. Any increase in the number of Lots from such re-platting or re-configuration shall be counted toward the 1184 cap in Section 13.B.1 (b)(i).

14. Facilities and Services. Although the nature of this long term Project prevents the Property Owner from now providing exact completion dates, the Property Owner certifies that the following services and Facilities will be in place (or if not fully in place, the cost of their construction fully bonded or letter of credit posted pursuant to the Town Subdivision Regulations) at the times provided below and as to roads, sewer, and water infrastructure, at the times Lots or Dwelling Units in subdivided real property or condominium units on recorded master deeds are offered for purchase to the public. Subject to compliance with applicable Laws with all provisions of this Agreement, the Town hereby authorizes the Property Owner, on its own or through its affiliated companies, to install the Facilities. Notwithstanding any provision herein to the contrary, the Property Owner hereby agrees that adequate Facilities (as defined in the definition of "Facilities" in Exhibit 1.1 ) shall be available concurrent with the impacts of Development. Nothing in this Agreement shall be construed to create an obligation for the Town to construct Facilities or on Property Owner to pave the currently unpaved sections of Eugenia Avenue.

- (a) Rights-of-Way. The Property Owner shall at its expense develop and provide roads and other related infrastructure, and pursuant to and at such times required by the KICA Covenants, transfer same to the KICA if they are intended to be KICA Common Properties or Purchased Common Properties or Restricted Common Properties.

(b) Water and Sewer.

- (i) Provider. The service and Facilities for water and sewer shall be provided by the Kiawah Island Utility, Inc. (currently owned by the Property Owner) or its successor. If however the Town were to exercise its right to eminent domain over Kiawah Island Utility, Inc. in accordance with the statutes and constitution of South Carolina, it would become the provider.

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(ii) First Offer. In the event the Property Owner decides to sell the assets of or stock in Kiawah Island Utility, Inc., Property Owner shall negotiate first with the Town and allow the Town to make the first purchase offer, if it so desires, before seeking purchase proposals from other persons. The Town shall have ninety (90) days after written notice from the Property Owner to provide notice to Property Owner that it intends to exercise its right of first offer and shall make its proposal no later than one hundred twenty (120) days after the initial written notice of the Property Owner. If the Town does not notify the Property Owner of its intent to exercise its right to first offer within the required time, or if the Town does not make an offer within the required time, or if such offer is rejected by the Property Owner, Property Owner may seek purchase proposals from others.

(iii) Service Area. Property Owner shall not cause Kiawah Island Utility, Inc. to expand its services beyond its existing service area, Kiawah Island, without obtaining the written approval of the Town.

(iv) Donations. Property Owner will install and contribute to Kiawah Island Utility, Inc. (or reimburse Kiawah Island Utility, Inc. for the cost of installation thereof) all water and sewer facilities and infrastructure physically installed after September 1, 2005, on the Parcels owned by the Property Owner as shown on Exhibit 4.1 (with the exception of Parcel 15) or their adjacent rights of way, to serve such Parcels. Such facilities and infrastructure include but are not limited to, distribution and transmission lines, hydrants, pumps, and lift stations. If an additional, new above-ground water storage facility is needed to serve the Parcels owned by the Property Owner as shown on Exhibit 4.1 (with the exception of Parcel 15), the Property Owner shall pay for it without charge to Kiawah Island Utility, Inc. and donate it to Kiawah Island Utility, Inc. Notwithstanding the foregoing, the Property Owner shall not be obligated to construct and donate or pay for aquifer storage and recovery ("ASR") systems or any related facilities or components of ASR systems, including but not limited to pipes, pumps, and above ground storage required and necessary to operate an ASR system. In addition, Property Owner will donate to Kiawah Island Utilities any real property underlying any above ground storage constructed.

The Town and the Property Owner acknowledge that binding decisions rendered in prior rate proceedings (and appeals thereof) of Kiawah Island Utility, Inc. have held that the Property Owner does not have a legal obligation to donate all the infrastructure facilities described in (iv) above and that such donation will be made in discharge, and in lieu, of possible future exactions and donations that the Town might otherwise try to recover from the Property Owner in the absence of this Agreement. Town and Property Owner agree that the donations specified in this section shall not, and do not, constitute a waiver of the Property Owner's right to seek payment for other transmission and related facilities that it may construct for Kiawah Island Utility, Inc. or may construct for it in the future.

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(v). Capacity Analysis. The Town shall have the right to have the Town's consulting engineers perform an analysis of Kiawah Island Utility, Inc. to determine (a) whether the water and sewer capacity of Kiawah Island Utility is sufficient to handle existing customers, and (b) whether the existing plant and facilities of Kiawah Island Utility are being maintained and repaired in good condition. This assessment maybe done up to three times during the term of this Agreement at times to be determined by the Town but in no event closer than three years apart, except that an examination may be performed within the last twelve months before the Termination Date of this Agreement or prior to the triggering of subsection 14 (b)(ii) above. Kiawah Island Utility, Inc. agrees to grant the consulting engineers access to such records (excluding proprietary financial information) and its personnel as necessary to complete the report. The Town agrees that the information disclosed to its consulting engineers is confidential and shall be treated by it and its engineers as being confidential. The Town shall pay for the expense of the engineer associated with this analysis. The Town and Property Owner agree to use Thomas &Hutton or a mutually agreed substitute to perform this analysis.

(vi) Rate Applications. Before intervening in future applications for rate adjustments by Kiawah Island Utility, Inc., the Town shall meet with representatives of Kiawah Island Utility, Inc. and the Property Owner to go over the proposed rate application, in an effort to avoid unnecessary expenditure of revenues of the Town and Kiawah Island Utility, Inc. on the litigation of rate applications. In consideration of the Property Owner entering this Agreement, the Town shall not expend any funds towards the expenses of a third party to assist a third party in intervening in any action before the South Carolina Public Service Commission ("PSC") involving a proposed rate increase applied for by Kiawah Island Utility, Inc. or any appeal thereof. The Town reserves the right to intervene in PSC proceedings initiated by Kiawah Island Utility, Inc. seeking a rate increase.

- (c) New Entrance and Roundabout. The Town shall be responsible for the maintenance, including landscaping and drainage, of the roundabout for the reconfiguration of the intersection of the Kiawah Island Parkway with the Betsy Kerrison Parkway, and associated areas. In the event that Property Owner believes the Town is not providing adequate maintenance, the Property Owner shall notify the Town specifying the nature of the deficiency. If the Town does not respond in writing to the Property Owner within 30 days and does not implement the correction of the deficiency within 30 days, the Property Owner shall have the right to accomplish the corrective measures, at its expense, unless the Town objects. If the Town objects, the Town and Property Owner shall attempt to arrive at a reasonable resolution. The Town recognizes that the donation of land by Atlantic Partners, an entity affiliated with Property Owner, to the Town to accomplish the roundabout constitutes a valuable contribution towards the Facilities, even though the roundabout is not located on Kiawah

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- (d) Exactions. In return for the provision of the facilities and services set forth in this section 14 of this Agreement and the same section of the Initial Agreement, the Town agrees that it will not seek further property or monetary exactions or impact fees related only to the facilities and services described in this section 14, subject to S.C. Code §§ 6-31-80 and 6-31-100 (Cum.Supp. 2004); provided, however, the Town is not the facilities and services provider, except in the event that it exercises its power of eminent domain over Kiawah Island Utility, Inc, in accordance with the statutes and constitution of South Carolina..

15. Reservations, Conveyances, Leases, Easements, and Other Agreements.

- (a) For Benefit of KICA. The Property Owner shall make the following reservations, conveyances, leases, easements, and other agreements for the benefit of the KICA:

(i) Beach Parking:

A. Ocean Course. Within a reasonable time after the effective date of this Agreement, the Property Owner shall make a non-exclusive assignment to the Town of its easement rights and interests under that certain Grant of 30' Easement and Amendment of Easement and Beachfront Property Agreement from Landmark Land Company of Carolina, Inc. to Kiawah Resort Associates, a South Carolina joint venture dated July 26, 1991, and recorded in the RMC Office for Charleston County at Book X204, page 613, and any amendments thereto and assumptions thereof (collectively the "Landmark Easement."). Upon such assignment, Town assumes the responsibility of coordinating with The Ocean Course Golf Club, LLC (and its successors) and KICA the implementation of the beach parking at the Ocean Course including obtaining the necessary permits for such construction, as set forth in the Initial Agreement and the amendments thereto. Property Owner shall cooperate with the Town in seeking such permits. Property Owner shall pay for and construct the parking spaces within a reasonable time after the permits are obtained. Upon completion of construction, the Town and Property Owner shall make an assignment (which at their respective elections may be non-exclusive of their respective interests) to KICA of their rights and interests under the Landmark Easement

B. Captain Sam's Spit. If the Property Owner should develop Parcel 12B as allowed by this Agreement, Property Owner shall construct a parking area of coquina shell or better for eight (8) cars at or near the west end of the road to such spit (which may be conveyed to KICA) and convey to

# Kiawah Island Utility Acquisition Schedule

(Subject to change as more information is received)

Exhibit B

KICA Motion to Dismiss

Date	Action
Tuesday, August 2	<ul style="list-style-type: none"> <li>Council decision/affirmation to study KIU Purchase</li> <li>Utility Task Force Appointed</li> </ul>
Thursday, August 5	<ul style="list-style-type: none"> <li>Issue RFQ's to Attorney and Engineering firms</li> <li>Public Notification, Town website</li> </ul>
Thursday, August 8	<ul style="list-style-type: none"> <li>Receipt of KDP's Formal written notice</li> </ul>
Tuesday, August 9	<ul style="list-style-type: none"> <li>Kiawah Island Utility Task Force Kickoff Meeting</li> </ul>
Monday, August 15	<ul style="list-style-type: none"> <li>Attorney RFQ Due date by 5:00 pm</li> </ul>
Monday, August 15	<ul style="list-style-type: none"> <li>Special Town Council meeting to adopt a Resolution authorizing a referendum</li> </ul>
Tuesday, August 16	<ul style="list-style-type: none"> <li>UTF meeting to review Attorney RFQs - 11:00 am</li> </ul>
Thursday, August 18	<ul style="list-style-type: none"> <li>UTF meeting to interview and select an Attorney firm</li> </ul>
Friday, August 19	<ul style="list-style-type: none"> <li>Notify selected Attorney firm (<i>send cover letter of intent to engage and standard contract/proposal as exhibit to the contract</i>)</li> </ul>
Monday, August 22	<ul style="list-style-type: none"> <li>Execute Attorney Contract (Haynesworth, Sinkler, Boyd PA - HSB)</li> <li>Attorney begins work to draft letter to SC Justice Department and referendum question</li> <li>Engineering RFQ due at 5:00 pm (<b>Extended deadline</b>)</li> </ul>
Tuesday, August 23	<ul style="list-style-type: none"> <li>UTF meets to recommend engineering firms to interview – 3:00 pm</li> <li>Develop schedule for discussions and site visits to utilities</li> </ul>
Friday, August 25	<ul style="list-style-type: none"> <li>1<sup>st</sup> notice of referendum on authorization to purchase KIU advertised in newspaper (<b>Published 8-24-11</b>)</li> </ul>
Tuesday, August 30	<ul style="list-style-type: none"> <li>Ways &amp; Means meeting – 9:00 am</li> <li>Announce selected Attorney firm (HSB) and progress update</li> <li>Staff to provide financial analysis and funding scenarios</li> <li>Recommendation to engage bond rating for TOKI Rating</li> <li>UTF Meeting: Interview/recommend select engineering firms - 2:00 pm</li> </ul>
Wednesday, August 31	<ul style="list-style-type: none"> <li>Notify selected Engineering firm (<i>send cover letter of intent to engage and standard contract/proposal as exhibit to the contract</i>)</li> </ul>
February , September 2	<ul style="list-style-type: none"> <li>UTF Meeting: To recommend engineering firms - 4:00 pm</li> </ul>
Monday, September 5	<ul style="list-style-type: none"> <li>Coordinate ballot and election preparation with State and County Election commission (<b>Completed 08-31-11</b>)</li> <li>Execute Engineering firm contract (<i>In process as of 9-6-11</i>) – (<b>Jacobs Engineering, William Young</b>)</li> </ul>
Tuesday, September 6	<ul style="list-style-type: none"> <li>Town Council Meeting</li> <li>Public hearing and second reading on budget amendment (<b>Approved 9-6-11</b>)</li> <li>First Reading of Ordinance 2011-7 Special Election Methodology (<b>Approved 9-6-11</b>)</li> <li>Announce selected attorney and engineering firm (<b>Completed 9-6-11</b>)</li> <li>Appoint 3<sup>rd</sup> Election Commission member (<b>Completed 9-6-11</b>)</li> <li>KIU Acquisition Update</li> </ul>
Wednesday, September 7	<ul style="list-style-type: none"> <li>Seabrook Island Utility Site Visit @ 2:00 pm (<b>Completed, Joe Hall and Tommy West</b>)</li> </ul>
Friday, September 9	<ul style="list-style-type: none"> <li>Kiawah Island Utility Site Visit @ 2:00 pm (<b>Completed, Becky Dennis and Michael Agin</b>)</li> </ul>
Friday, September 16	<ul style="list-style-type: none"> <li>UTF meeting with Attorneys (HSB) and Engineers (Jacobs) @ 2:00 pm</li> <li>Notice to proceed issued for KIU inspection, evaluation, etc.</li> <li>Discuss schedule of reviews with Engineer (Jacobs)</li> <li>Discuss visits to Seabrook Island Utility and Kiawah Island Utility</li> </ul>
Wednesday, September 21	<ul style="list-style-type: none"> <li>Draft PowerPoint presentation for public information meetings issued to UTF</li> </ul>

Sunday, September 25	<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> notice of referendum on authorization to purchase KIU advertised in newspaper</li> </ul>
Tuesday, September 27	<ul style="list-style-type: none"> <li>• Election Commission Meeting – (Tiger Wells, Theodore Dubois, HSB and Joe Debney, Charleston County Election Commission)- 10:00 am</li> <li>• Ways &amp; Means Committee Meeting – 1:00 pm</li> <li>• UTF Meeting to review PowerPoint presentation and KIU acquisition update – 3:00 pm <ul style="list-style-type: none"> <li>- Meeting with representatives from the Charleston Water Company (Kin Hill and Wesley Ropp, CFO)</li> <li>- Staff to provide updates on financial analysis and bonding assessment (<i>TBD</i>)</li> </ul> </li> </ul>
Friday, September 30	<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Public Information Meeting – 2:00 pm (Town Hall) <b>(A)</b></li> </ul>
Tuesday, October 4	<ul style="list-style-type: none"> <li>• Town Council Meeting</li> </ul>
Wednesday, October 5	<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> Public Information Meeting, 7:00 pm (Town Hall)</li> </ul>
Tuesday, October 11	<ul style="list-style-type: none"> <li>• Potential conference call to discuss engineering report</li> </ul>
Saturday, October 15	<ul style="list-style-type: none"> <li>• 3<sup>rd</sup> Public Information meeting, 9:00 am (Town Hall)</li> </ul>
Monday, October 24	<ul style="list-style-type: none"> <li>• Summary of the initial phase from Jacob's Engineering report to UTF</li> </ul>
Tuesday, October 25	<ul style="list-style-type: none"> <li>• Referendum voting</li> <li>• Ways &amp; Means Committee Meeting – 2:00 pm</li> </ul>
Friday, October 28	<ul style="list-style-type: none"> <li>• Town Election Commission to certify referendum results – 10:00 am</li> </ul>
Monday, October 31	<ul style="list-style-type: none"> <li>• UTF Meeting to discuss Engineering initial report (Executive Session) – 1:00 pm</li> <li>• <b>(A) (E)</b></li> </ul>
Tuesday, November 1	<ul style="list-style-type: none"> <li>• Town Council Meeting – 2:00 pm</li> <li>• Review referendum results</li> <li>• Authorize Attorney (HSB) to prepare bond referendum process and question</li> <li>• Begin action on acquisition</li> <li>• Action on preparing purchase agreement</li> </ul>
Tuesday, November 8	<ul style="list-style-type: none"> <li>• Engineering follow-up report to UTF (<b>TBD</b>)</li> </ul>
Wednesday, November 9	<ul style="list-style-type: none"> <li>• Town advises KDP of decision to exercise right of first offer</li> </ul>
Tuesday, November 22	<ul style="list-style-type: none"> <li>• Attorney (HSB) to provide update on bond referendum process</li> <li>• Jacobs Engineering follow-up report to UTF (<b>TBD</b>) <b>(A)(E)</b></li> </ul>
Tuesday, November 29	<ul style="list-style-type: none"> <li>• Ways &amp; Means Committee Meeting with UTF</li> <li>• KIU acquisition update</li> </ul>
Tuesday, December 6	<ul style="list-style-type: none"> <li>• Town Council Meeting</li> <li>• 120-Day proposal deadline per the Development Agreement</li> <li>• KIU acquisition and bond update</li> </ul>
Tuesday, January 3	<ul style="list-style-type: none"> <li>• UTF Meeting - 3:00 pm</li> <li>• Review and approve bond referendum question and strategy</li> <li>• Letter sent to SC Justice Department</li> <li>• Notice to Charleston County and Town Election Commission</li> </ul>
Friday, January 6	<ul style="list-style-type: none"> <li>• Deadline for Town's proposal to KDP</li> </ul>
Tuesday, January 10	<ul style="list-style-type: none"> <li>• Ways &amp; Means Committee - 9:00 am</li> <li>• Town Council Meeting - 2:00 pm</li> <li>• KIU acquisition and bonding update</li> </ul>
Thursday, January 12	<ul style="list-style-type: none"> <li>• 1<sup>st</sup> notice on bond referendum advertised</li> </ul>
Sunday, February 12	<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> notice on bond referendum advertised</li> </ul>
Tuesday, February 14	<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Public Information Meeting - 2:00 pm (Town Hall)</li> </ul>
Wednesday, February 29	<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> Public Information Meeting - 7:00 pm (Town Hall)</li> </ul>
Saturday, March 10	<ul style="list-style-type: none"> <li>• 3<sup>rd</sup> Public Information Meeting - 9:00 am (Sandcastle)</li> </ul>
Tuesday, March 13	<ul style="list-style-type: none"> <li>• Bond referendum voting</li> </ul>
Wednesday, March 16	<ul style="list-style-type: none"> <li>• Town Election Commission to certify referendum results</li> </ul>

**(A) = Attorney to attend**

**(E) = Engineer to attend**